

No. 25-1105

IN THE
Supreme Court of the United States

FRANK THOMPSON,
Petitioner,

v.

CARL WILSON, IN HIS OFFICIAL CAPACITY AS
COMMISSIONER, MAINE DEPARTMENT OF
MARINE RESOURCES,
Respondent.

**On Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The First Circuit**

RESPONDENT'S SUPPLEMENTAL BRIEF

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INTRODUCTION

As previously explained in Respondent’s Brief in Opposition, Petitioner has failed to establish a basis for this Court to grant the Petition for a Writ of Certiorari in this matter. The Ninth Circuit’s recent panel decision in *Richards v. Newsom*, No. 25-693, 2026 WL 2529326 (9th Cir. Aug. 27, 2026) does not change that fact. Rather than demonstrating any circuit split, *Richards* simply shows that courts may reach different conclusions when applying *New York v. Burger*, 482 U.S. 691 (1987), to different sets of facts. *Richards* discussed *United States v. Jones*, 565 U.S. 400 (2012), and *Katz v. United States*, 389 U.S. 347 (1967), only in the context of deciding whether the regulation in question authorized warrantless searches, not whether those searches were reasonable under *Burger*. The First Circuit expressly analyzed whether the facts in this case—including the location and hours of business operations—satisfied the *Burger* test, and Petitioner’s disagreement with that analysis does not establish a basis for this Court to grant the Petition.

DISCUSSION OF SUPPLEMENTAL AUTHORITY

In *Richards*, the Ninth Circuit considered a California law requiring all Federal Firearms Licensees (“FFLs”) to “maintain a digital video recording system on their business premises.” 2026 WL 2529326, at *3. Regarding the Fourth Amendment, the court first considered whether the requirement to maintain the surveillance system in and of itself authorized warrantless searches. The panel majority determined that the challenged law did not on its own authorize warrantless searches. *Id.* at *8-11. The majority, however, also stated that “even if” the law authorized warrantless searches, those searches would constitute lawful

administrative searches under *Burger*. *Id.* at *12-14. In reaching this conclusion, the majority specifically distinguished on its facts *Rush v. Obledo*, 756 F.2d 713 (9th Cir. 1985), the Ninth Circuit’s pre-*Burger* decision striking down a warrantless search regime affecting home daycares. The dissent disagreed that home daycares are sufficiently factually distinguishable from home-based FFLs for purposes of determining whether an administrative search is sufficiently limited in scope under *Rush* and *Burger*. 2026 WL 2529326, at *30. To the extent the *Richards* panel opinions addressed administrative search doctrine, then, they did so in the context of a fact-based dispute about whether a specific law requiring the installation of video cameras in home-based FFLs has a sufficiently defined scope and therefore satisfies the third prong of the *Burger* test.

Richards does not demonstrate a basis for this Court to grant the Petition, and Petitioner’s assertions to the contrary are wholly mistaken, for several reasons. First, *Richards* does not evidence a circuit split regarding this Court’s administrative search precedents. Rather, *Richards* demonstrates that different judges may arrive at different fact-based determinations when applying *Burger* to specific regulatory regimes and specific types of business premises and operations.

Second, *Richards* does not concern Petitioner’s contention that “*Jones*, *Katz*, or both must inform reasonableness inquiries for administrative searches.” Pet. Supp. Br. at 1. As previously explained at length, *Jones* and *Katz* address whether a challenged law or action constitutes a search within the meaning of the Fourth Amendment, not whether an already identified search is lawful. *See* Resp. Br. in Opp. at 11-12, 14-15.

Indeed, the *Richards* majority only discussed *Jones* and *Katz* in assessing whether the California law authorized searches within the meaning of the Fourth Amendment. 2026 WL 2529326, at *8. Identifying a search is not at issue in this case because Respondent conceded that the DMR Rule authorizes searches within the meaning of the Fourth Amendment. Resp. Br. in Opp. at i, 5, 12.

Third, Petitioner's reliance on the treatment of *Rush* in *Richards* is unavailing. As the *Richards* majority explicitly noted, *Rush*'s holding reflects the "peculiar nature of family day care homes" and the specifics of the warrantless search scheme at issue in that case. 2026 WL 2529326, at *13. Similarly, the First Circuit in this case conducted "its own specific analysis of what the *Rush* court might have called 'the peculiar nature of the lobstering industry'" and the DMR Rule's specific scope. See Resp. Br. in Opp. at 17-18. It is simply untrue that the First Circuit held that "*Rush*'s areas and hours considerations . . . [do not] matter." Pet. Supp. Br. at 2. To the contrary, the First Circuit considered where and when lobster fishing occurs, as well as the limited and specific type of data collected pursuant to the DMR Rule. See Resp. Br. in Opp. at 13-14, 17-18. Petitioner may disagree with the First Circuit's application of administrative search law to the facts in this case, but neither *Richards* nor *Rush* indicate a circuit split that could be addressed by granting the Petition.

CONCLUSION

For the foregoing reasons, and for those stated in Respondent's Brief in Opposition, this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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